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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 813,592	03/21/2001	Daniel J. Lubera	0275M-000320/CPA	3509

27572 7590 06/02/2004
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EXAMINER

RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/813,592

Applicant(s)

LUBERA ET AL.

Examiner

Ruth C Rodriguez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-14, 18, 19, 22, 68-94 and 101-113 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-14, 18, 19, 22 and 68-94 is/are allowed.
- 6) ☒ Claim(s) 101-111 is/are rejected.
- 7) ☐ Claim(s) 112 and 113 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).
2. Misnumbered claims 102 (second occurrence)-110 been renumbered 103-111.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 101-103, 105 and 107-110 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuffel (US 5,759,004).

A resilient clip (10) secures a first member (30) to a second member (26,28) (Figs. 1, 9 and 10). The resilient clip comprising a flange portion (lower portion of 14), an inserting portion (18) and a retaining portion (20). The insertion portion is coupled to the flange portion and inserts into a hole (32) formed into the first member (Figs. 1, 9 and 10). The inserting portion has two portions that are disposed on opposite side of a

longitudinal side of a longitudinal axis of the resilient clip (Figs. 1-9). Each of the portion of the insertion portion defines an outer planar surface that is angled upwardly toward the flange portion and outwardly away from the longitudinal axis (Fig. 2, 3, 7, 8 and 10). The retaining portion is coupled to the insertion portion and includes at least one wing member (20) for each of the portions of the insertion portion. Each wing member has a warped planar outer surface that coextends with the outer planar surface of an associated one of the portion of the insertion portion (Figs. 2-4 and 6-10). The warped outer surface is disposed on a same side of the longitudinal axis as the outer planar surface of the associated one of the portions of the insertion portion (Figs. 2-4 and 6-10). Each wing member terminates at a tip portion and each of the tip portions are co-engage the first member (Figs. 1-10).

Kuffel also discloses that:

- Each of the tip portions is angled such that a lateral end of the first one of the wing members extends above a corresponding lateral end of a second one of the wing members that is disposed on an opposite side of the longitudinal axis (Fig. 4).
- The tip portion is defined by an included angle of about 30 degrees to about 80 degrees (Fig. 4).
- Each tip portion has a flat edge for contacting the first member (Figs. 1-10).
- Each of the first and second wing members further include a base portion (16a) that is fixedly coupled to the insertion portion (Figs. 2-5). The first and second wing members being twisted such that the their tip portions are twisted relative to their base portion by an angle of about 5 degrees to about 45 degrees (Figs. 6).

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- The angle is about 30 degrees (Fig. 6).
- The resilient clip further includes a spacing structure (16, upper part of 14)

having first (upper part of 14) and second (16) flange members (Figs. 1-10). The first flange member is coupled to the flange portion and the second flange member is coupled to an outer edge of the first flange member and tapering downwardly toward the retaining portion and outwardly from the flange portion (Figs. 1-5, 7, 8 and 10).

- The spacing structure is formed from resilient material.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claim 104 and 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuffel.

Kuffel discloses that the included angle is about 30 degrees. Kuffel fails to disclose that the included angle of the tip portion is about 60 degrees. However, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to have the included angle of the tip portion being about 60 degrees. A change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

The resilient clip disclosed by Kuffel is made from sheet metal and therefore the spacing structure will also be made from sheet metal. Kuffel fails to disclose that the spacing structure is made from a resilient material where the resilient material is plastic.

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However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the resilient clip made from plastic such that the spacing structure will also be made from plastic because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). In this case, the use of plastic is widely known in the art for the resilient clips because this material has a lighter weight and provides protection to the clip due to exposure to the weather.

7. Claims 106 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuffel in view of Anderson (US 5,251,467).

Kuffel discloses a resilient clip having the limitations listed above in paragraph 4 for the rejection of claim 101. Kuffel fails to disclose that the tip portion has an edge for contacting the first member into which a plurality of teeth is formed. However, Anderson teaches a cam lock comprising a pair of wing members (25). The wing members initially are shown have an edge with a flat surface for contacting a structure (5,6) (Figs. 5 and 6). Anderson also teaches that the wing members have an edge with a plurality of teeth (Fig. 7). The teeth will lock the edges of the wing members against the structure and allow for variations in thickness of the structure. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to use a plurality of teeth in the edge of the wing members as shown by Anderson in the resilient clip disclosed by Kuffel. Doing so, will lock the edges of the wing members against the structure and allow for variations in the thickness of the structure.

Allowable Subject Matter

8. Claims 9-14, 18, 19, 22 and 68-94 are allowed.
9. Claims 112 and 113 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 101-111 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wiley (US 2,217,781), Poutpitch (US 2,509,192), Meyer (US 2,959,259), Osterland et al. (US 4,630,338), Kuffel (US 5,759,004), Cornell et al. (US 5,774,949) and Danby et al. (US 5,873,690) are cited to show state of the art with respect to resilient clips having some of the features disclosed by the current invention.

Hirohata (US 4,668,145) is cited to show state of the art with respect to a flange extending around the periphery of the main body of a fastener.

Van Order et al. (US 5,636,891) is cited to show state of the art with respect to the use of spacing structures and resilient clips.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (703) 308-1881. The examiner can normally be reached on M-F 07:15 - 15:45.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115.

Submissions of your responses by facsimile transmission are encouraged. Technology center 3600's facsimile number for before and after final communications is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

rcr
June 1, 2004


ROBERT J. SANDY
PRIMARY EXAMINER